

**Hunter v. Durr**

**06 - CV - 00411**

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# **Exhibit A**

**to Plaintiff's Suggestions in Opposition  
to Defendant's Motion for Summary Judgment**

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**Excerpts from Deposition of Scott Matthew Wagner  
taken November 10, 2006**

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 MIDDLE DISTRICT OF ALABAMA  
3 AT MONTGOMERY

4 Anne Marie Hunter,

5 Plaintiff,

vs.

2:06-CV-00411-WHA-SRW

6 Durr Systems, Inc.,

7 Defendant.

ORIGINAL

8  
9 The Deposition of SCOTT MATTHEW WAGNER taken by the  
10 Plaintiff, pursuant to Notice, before Carol L. Martin  
11 (CSR-3532), a Notary Public within and for the County of  
12 Oakland, (acting in Wayne County), State of Michigan, at the  
13 Embassy Suites, 19525 Victor Parkway, Livonia, Michigan, on  
14 November 10, 2006.

15 APPEARANCES:

16 HANKINS & CONKLIN, P.C.  
17 BY: THOMAS E. HANKINS  
18 6812 North Oak Trafficway, Suite 5  
Gladstone, Missouri 64118-2587  
(816) 436-3100

19 Appearng on behalf of the Plaintiff.

20 SIROTE & PERMUTT  
21 BY: MR. CHRISTOPHER A. BOTTCHER  
22 2311 Highland Avenue South  
Birmingham, Alabama 35205  
(205) 930-5100

23 Appearng on behalf of the Defendant.

1 Livonia, Michigan

2 Friday, November 10, 2006

3 At or about 9:44 a.m.

4 - - - - -  
5 S C O T T M A T T H E W W A G N E R

6 was thereupon called as a witness herein, and after  
7 having been first duly sworn to tell the truth, was  
8 examined and testified as follows:

9 EXAMINATION

10 BY MR. HANKINS:

11 Q State your name, please.

12 A Scott Matthew Wagner.

13 Q And whereabouts do you live?

14 A I live in Northville, Michigan.

15 Q Who do you work for?

16 A Durr Systems.

17 Q How long have you been with Durr?

18 A Approximately five and a half years.

19 Q What do you do for them?

20 A I am currently the Corporate Safety Officer. The head  
21 of safety responsibilities for the company.

22 Q Were you down in Montgomery, Alabama when my client  
23 got hurt?

24 A No.

25 Q Where were you in that time period?

1 A Yes, I agree.

2 Q Now, sometimes a person must go into a hazardous area  
3 to do his or her job. Would you agree with me there?

4 A Yes, I agree.

5 Q When a person must go into a hazardous area to do his  
6 or her job, one of the ways to assure safety is to  
7 point out the hazards that exist to that person,  
8 correct?

9 A Correct.

10 Q In Anne Marie Hunter's incident, can you see any  
11 reason not to have advised her that a grid was  
12 missing?

13 A Other than the fact that she should have been aware  
14 that she was in a working plant environment.

15 Q Well, to put it more simply, I mean if Christian had  
16 called you up and said, "A photographer is about to  
17 enter the paint booth and there's a grid missing,  
18 should I tell her about it" --

19 A I would say yes.

20 Q Yeah. There is no downside to telling her, is there?

21 A No.

22 Q And I take it that you would agree with me that having  
23 somebody enter a paint booth where part of the  
24 flooring had been removed creates a potential for  
25 injury?

1 A Yes, I agree.

2 Q And you understand that the part of the flooring that  
3 was removed would be obscured from time to time by car  
4 bodies moving over it?

5 MR. BOTTCHER: Object to the form.

6 THE WITNESS: Yes.

7 BY MR. HANKINS:

8 Q The reason why that may be important from a safety  
9 point of view is that somebody in the paint booth who  
10 has good vision and good consciousness of safety may  
11 not be able to see the missing flooring because it was  
12 obscured by a moving -- paint moving auto body?

13 MR. BOTTCHER: Object to the form.

14 BY MR. HANKINS:

15 Q Correct?

16 A Correct.

17 Q The hazard created by the missing grid is that  
18 somebody may fall into the cavity created by the gap,  
19 correct?

20 A Correct.

21 Q Have you talked with Christian or communicated with  
22 Christian to learn why he did not tell Anne Marie of  
23 the missing grid?

24 A I have not.

25 Q Have you through your independent investigation

1 as far as our process goes.

2 Q But as your job as Corporate Safety Officer, when an  
3 accident happens, you do like to learn why it  
4 happened, correct?

5 A Yes.

6 MR. BOTTCHER: Object to the form.

7 BY MR. HANKINS:

8 Q And one of the reasons why you like to learn why it  
9 happened is to see if maybe you can learn from it and  
10 prevent similar accidents in the future?

11 MR. BOTTCHER: Object to the form.

12 THE WITNESS: Yes.

13 BY MR. HANKINS:

14 Q So at what point did you gain an understanding as to  
15 why the grid had been removed?

16 A I don't believe I have an understanding as to why the  
17 grid was removed.

18 Q Are there any techniques available in your field of  
19 expertise that could have advised a person of the  
20 missing grid in this particular paint booth?

21 MR. BOTTCHER: Don't guess. If you have  
22 a judgment, that's one thing, but you can't guess or  
23 speculate.

24 THE WITNESS: A judgment would be there's  
25 various ways of warning somebody of a missing grid.

1 BY MR. HANKINS:

2 Q Tell me what those are.

3 A Signs is one example.

4 Q Others?

5 A Word-of-mouth, information, meetings can be discussed  
6 what's going on in the general vicinity, having  
7 someone barricade the area, if applicable.

8 Q Do you ever use tape?

9 A Warning tape?

10 Q Yes.

11 A Yes.

12 Q Is warning tape only used as a barricade item or is it  
13 also used as a warning item?

14 A Warning tape isn't used as a barricade, it's usually  
15 used as a visual warning.

16 Q Because people can duck under it or step over it or go  
17 through it?

18 A Correct.

19 Q Any other devices available to you in the safety  
20 industry that you can use to notify people of a  
21 missing grid, such as we're involved with here?

22 A I would say, yes, there's many things that can be  
23 used.

24 Q Are most of them visual cues?

25 A As far as a warning, yes, it would be visual.

1 Q Getting back to the orange cones, that's a visual cue?

2 A Correct.

3 Q Warning tape is a visual cue?

4 A Correct.

5 Q A sign is a visual cue?

6 A Correct.

7 Q From what other -- aside from a visual cue and then a  
8 verbal, "Watch out," what else is there in your  
9 repertoire of safety devices?

10 A Well, the best thing to do is to eliminate the hazard  
11 altogether or engineer it out.

12 Q Was this ultimately done here, that it was eliminated?  
13 In other words, as we're sitting here today, was that  
14 grid replaced?

15 A I don't know.

16 Q In your field in corporate safety, is it also  
17 important to set limits as to where different people  
18 are allowed access in a plant?

19 MR. BOTTLER: I'm going to just object  
20 to sort of the breath of that question.

21 BY MR. HANKINS:

22 Q And by way of example, I mean if I went to the  
23 facility in Montgomery, Alabama, my guess is perhaps I  
24 could enter into the corporate office area where there  
25 are desks and chairs and a vending machine maybe, but

1 Q Are you familiar with the robotic paint booths, such  
2 as the one that is involved in this accident?

3 A Yes, I'm familiar with them.

4 Q And Bruno I believe mentioned that there were robotic  
5 arms that move at fairly high speed in those robotic  
6 paint booths. Would you agree with that  
7 characterization?

8 A I would agree that there's movement. I don't  
9 necessarily believe that they're at high speed, but it  
10 is a hazard.

11 Q And the hazard would be, to put it quite simply, that  
12 if you got too close and weren't paying attention, you  
13 could get knocked on the head with one of those moving  
14 arms?

15 A Yes.

16 Q And in a robotic paint booth such as the one where  
17 Anne Marie was when she had her accident, the robotic  
18 arms -- are they for a normal size person at waist  
19 level, at head level, ten feet above the surface?  
20 Where would the robotic arms be?

21 A I can't answer that question. I don't know the  
22 specifics of the engineering robots in the booth.

23 Q What is your understanding as to what Anne Marie  
24 Hunter was doing in the robotic paint booth?

25 A My understanding is that she was taking pictures for

1 Q Do you know where he went to?  
2 A No, I don't.  
3 Q Do you know somebody at Durr who would know the answer  
4 to that question?  
5 A No.  
6 Q Who was he closest to at Durr, to your knowledge?  
7 A I don't know.  
8 Q Did he have a secretary?  
9 A I don't know.  
10 Q Did he have an assistant?  
11 A I don't know.  
12 Q Your job is focused on safety in the workplace, of  
13 course, correct?  
14 A Yes.  
15 Q Is safety in the workplace something that is a high  
16 priority at Durr?  
17 A Yes.  
18 Q Do you feel that Durr gives you the freedom and the  
19 latitude to see to it that safety remains a high  
20 priority at Durr?  
21 A Yes.

22 MR. HANKINS: That's all I have.

23 (Deposition concluded at 10:21 a.m.)

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